

The Commission Should Not Impose Philips's Conditions on the Licensing of DTCP

DTCP LICENSES ARE REASONABLE AND NONDISCRIMINATORY

- Low cost – Pricing based on maintenance, development and administration, not commercial IP royalties
- Same license terms offered to all similarly situated parties
- Accepted by 90+ licensees, including Philips
- Applies to multiple digital video services, not just terrestrial broadcast

NON-ASSERTION COVENANT IS NOT UNFAIR DISCRIMINATION

- Necessary Claims/Non-assertion Covenant structure reduces IP risks for all licensees
- Enables low cost licensing, which promotes competition and consumer benefit
- Pro-competitive – Promotes competition for digital video products
- Every licensee knows the scope of the nonassert before accepting it

PHILIPS ARGUMENTS ARE WRONG BECAUSE:

- No Standard Setting Body defines license terms that are or are not “reasonable and nondiscriminatory”
- No Standard Setting body holds that non-assertion covenants are not “reasonable and nondiscriminatory”
- DTLA cannot “take” a licensee’s technology – the DTCP agreements preclude material changes to the Specification and, therefore, to the non-assertion covenant
- Starkly different Rule of Reason analysis in *U.S. v. Microsoft*
- Patent disclosure is unnecessary, expensive and risky for both licensee and licensor
- Licensees can challenge any changes that violate license
- “Mandatory” downstream approvals could create disincentives for pro-consumer uses of EPN

It would be unfair to overturn the bargained-for expectations of more than 90 licensees in an inexpensive, procompetitive licensing model. without any evidence of harm to competition.